IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5290 of 2007

Date of Decision: October 12, 2007

Municipal Committee Kharkhoda .....Petitioner

Versus

Raghbir Singh Goel and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.RS Hooda, Advocate for the petitioner.

S. D. ANAND, J.

1. An ejectment petition (No.66/2 of 2003) under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 filed by Raghbir Singh, respondent No.1 – landlord against judgment-debtor Subhash Dahiya, respondent No.2, was allowed by the learned Rent Controller vide order dated 11.8.2007. That order was upheld by the learned Appellate Authority on 3.10.2007.

2. The petitioner before this Court i.e. Municipal Committee, Kharkhoda, which was not a party to the civil suit aforementioned, resisted the execution of the impugned decree by raising a plea that it is owner of the property in suit.

3. The plea was filed in the light of the provisions of Order 21 Rule 97 of the Code of Civil Procedure.

4. The learned Trial Court declined to interfere by pointing out

that the petitioner being a non-party to the civil suit and also not being in possession of the property in suit could not resist execution and establish its title in the course of execution proceedings. That order was upheld by the learned First Appellate Court in a detailed order. Relying upon a judgment rendered in **Kartar Singh Vs. Gurmit Singh**, 2003(1) L.J.R. 843 and **Ahmed Hussain Vs. Kanti Lal**, 2003 (2) L.J.R. 349, the learned First Appellate Court made the following observations:

> "From the aforesaid observations of Hon'ble Supreme Court, it is clear that no doubt that the word "any person" as used in Order 21 Rule 97 CPC includes all persons, including those who are not bound by the decree and that said persons include a stranger and that whenever objection is filed by any person in the execution, all questions relating to right, title or interest in the property arising between the parties shall be determined by the executing Court and not by a separate suit. However, as the observations of Hon'ble Supreme Court in para No.14 reproduced above (underlined) reveal that such person should be in possession and then the right/title claimed by him is to be adjudicated. In other words, a person in possession (even a stranger) can object and get adjudication when he is sought to be dispossessed by the decree holder under Order 21 Rule 97 to read with rules 99 & 101. Meaning thereby, said remedy cannot be availed by a person, who is not in possession of the property under execution.
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> In the present case, the objector-appellant-Municipal Committee is not in possession of the demised property. Objector claims title to the property and submits that in fact, JD is tenant under it. The objection petition itself reveals that it is claimed that DH is in unauthorized occupation over the disputed property. Meaning thereby, even the objector has admitted that it is the decree holder, who was in possession of the disputed property, though said possession is alleged to be

unauthorized. The question regarding title to the demised property is foreign in the ejectment proceedings. Under the garb of present objection, the objector-Municipal Committee cannot get the question of title adjudicated in these execution proceedings, when the said objector is not in possession of the demised property and so, objection cannot be allowed to deny the fruits of the decree to the decree holder. In all these circumstances, I am of the considered opinion that appellant-Objector cannot draw any benefit by the ratio of Shrinath's case (cited supra), which is clearly distinguishable on facts."

5. In the light of those observations, the learned First Appellate Court held that the dispute qua title of the property, as between the Municipal Committee (petitioner before this Court) and the decree-holder cannot be gone into in the execution proceedings, particularly when the ejectment order passed against the respondent-tenant had been upheld by the learned Appellate Authority and the decree-holder is entitled to the execution thereof.

6. The line of reasoning adopted by the learned Trial Court and also the learned First Appellate Court is legally sustainable and in order. I find nothing irregular or perverse in the exercise of discretion by both the Courts.

7. Dismissed.

(S. D. ANAND)
JUDGE

October 12, 2007
SRM

Note: Whether referred to reporter ? Yes/No